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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Karl R. Kennedy et. Al

Serial No.: 10/717,078

Filed: November 19, 2003

For: AN INSTRUMENT PANEL HAVING CONCEALED SWITCHES

Attorney Docket No.: LEAR 03781 PUS

Group Art Unit: 3616

Examiner: Jacob Y. Choi

AMENDED APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an Appeal Brief from the final rejection of claims 1-18 and 20-21 of the Office Action mailed on April 11, 2006 for the above-identified patent application.

I. REAL PARTY IN INTEREST

The real party in interest is Lear Corporation ("Assignee"), a corporation organized and existing under the laws of the state of Michigan, and having a place of business at 21557 Telegraph Road, Southfield, MI, as set forth in the assignment recorded in the U.S.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8**

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

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Date of Deposit

John R. Buser  
Name of Person Signing

[Signature]  
Signature

Patent and Trademark Office on November 19, 2003 at Reel 014729 and Frame 0125.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences known to the Appellant, the Appellant's legal representative, or the Assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## **III. STATUS OF CLAIMS**

Claims 1-18 and 20-21 are pending in this application. Claims 1-3, 10-18 and 20-21 have been rejected and are the subject of this appeal. Claims 4-9 are objected to as being dependent on a rejected base claim but would be allowable if written in independent form.

A pre-Appeal Brief Request for Review was filed with the Notice of Appeal. The Notice of Panel Decision from Pre-Appeal Brief review withdrew the rejections with respect to USPN 6,247,825 to Borkowski.

## **IV. STATUS OF AMENDMENTS**

No after final amendments were attempted.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Claims 1 and 17 are the only pending independent claims. Each claim is limited to instrument panel systems having a control module, control panel, and illumination source. The control panel includes buttons, switches, icons or other features for interfacing passenger requests with the control module. (Page 4, Lines 15-20; Page 9, Lines 15-21)

The control module selectively illuminates the switches, icons or other control panel features as a function of a vehicle system to be controlled with the actuation of the same. The control module may vary the illumination of the switches such that the selective illumination determines the vehicle system to be controlled. (Page 7, Lines 1-9; Page 10, Lines 21-27)

In this manner, the present invention provides a system for electronically controlling different vehicle systems as a function of variable switch illumination. The same switches are illuminated differently to control different vehicles systems such that the user may press the same switch at different times to control different vehicle systems.

Claims 15 and 21 further include multiple icons associated with each switch. Each icon on the same switch is separately illuminated to indicate the different vehicle systems controlled with actuation of the same. (Page 6, Lines 16-21; Pages 8-9, Lines 26-4)

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Claims 1-3, 10-17, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,987,793 to Ebine in view of U.S. Patent Application No. 2002/0080043 to Damiani; and

2. Claims 18 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Ebine patent, the Damiani application, and further in view of U.S. Patent No. 6,121,959 to Fukumoto.

## VII. ARGUMENT

### A. **Claims 1-3, 10-17, and 21 Are Patentable Under 35 U.S.C. § 103(a) Over The Ebine Patent and Damiani Application**

Independent claims 1 and 17 include limitations to an instrument panel system having an instrument panel with a number of switches. The system further includes a control module for controlling an illumination source to selectively illuminate the switches. Depending on the switch illumination, different vehicle systems are controlled with actuation of the switches. The control module facilitates controlling different vehicle systems as a function of variable switch illumination.

The Examiner submits the combined teachings of the Ebine patent and Damiani application disclose each of these limitations. The Appellants submit the Ebine patent is non-analogous art, it is improper to combine the cited references, and the improper combination of the same still fails to teach each claim limitation.

#### **Non-analogous Art**

With respect to analogous art, MPEP § 2141.01(a) state the following:

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at

issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be **in the field of applicant's endeavor or**, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). (emphasis added)

The Ebine patent relates to video cameras and limiting user confusion by hiding buttons used to control video operations when such buttons are not desired for use. The Ebine patent provides strips of buttons that may be hidden with manual actuation of a switch. All of the buttons in strip are tied to common operations such that the entire strip is hidden.

The Appellants application relates to controlling different vehicle systems with the same switches. The switches are illuminated differently as a function of the vehicle system to be controlled. Unlike the Ebine patent, the Appellants invention has nothing to do with controlling video cameras. One endeavoring to solve problems with respect to controlling different vehicle systems would not logically avail themselves of the teachings associated with video cameras.

Furthermore, unlike the Ebine patent, the Appellants application has nothing to do with endeavoring to solve user confusion. The Ebine patent limits user confusion by providing different sets of buttons for different video camera operations and hiding the buttons from view. The Appellants invention increases user confusion, if anything, by illuminating the same buttons to control different vehicle systems. One endeavoring to provide greater user confusion by using the same switches to control different vehicle operations would not avail themselves of a reference that limits user confusion by using different buttons for different video camera operations and that hides the different buttons when not in use so as to limit user confusion.

The Appellants submit the Ebine patent is non-analogous art. One endeavoring to solve the problems associated with the Appellants invention would not logically avail themselves of the teachings of the Ebine patent. As such, the Appellants submit the Ebine patent is unsuitable for rejection the presently pending claims.

### **Improper Combination**

Notwithstanding the non-analogous nature of the Ebine patent, the Appellants submit there is not motivation in the references or one of ordinary skill in the art to combine the teachings of the Ebine patent with the teachings of the Damiani application. As noted in MPEP § 2143.01, the proposed reference combination cannot render the references unsatisfactory for its intended purpose or change its principle of operation. This sections states the following:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

\* \* \*

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (emphasis added)

The Ebine patent includes multiple strips of buttons that can be hidden from view by turning off an illumination source associated therewith. The Ebine patent is necessarily limited to associating a single operation with each of the buttons as it would be

impossible to limit user confusion and to hide the buttons if the buttons in each strip could be used for different operations.

In contrast, the Damiani application is directed to a user interface having a display offset relative to a number of fixed buttons configured to control options provided in the display. A user may actuate the fixed buttons in order to control the information displayed in the display such that the same buttons may be used to control different vehicle systems.

There is not motivation to combine the teachings of the Ebine patent with the teachings of the Damiani application because it would change the intended operation of the references and render them unsuitable for their intended purpose.

The combination of the Ebine patent with the Damiani application would require the Damiani application to associate the buttons with only one operation, and thereby, prevent its intended operation of using the same buttons to accommodate multiple functions. Moreover, the combination of the Ebine patent with the Damiani application would require the Damiani application to vary illumination of the buttons instead of the display, and thereby, prevent its intended operation of using a variable display.

The Appellants submit there is not motivation to combine the cited references. The proposed combination renders the cited references unsuitable for their intended purpose and changes their principle operation. As such, the Appellants submit the proposed combination is unsuitable for rejecting the presently pending claims.

### **Each Limitation Not Taught**

Notwithstanding the impropriety of combining the cited references, the cited references still fail to teach each limitation of the claims 1 and 17. As noted in MPEP § 2143.03, each claim limitation must be taught in the cited references. This section states the following:

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). (emphasis added)

The cited reference fail to teach all the limitations of claims 1 and 17. In particular, the references fail to teach a control module that selectively illuminates switches and controls different vehicle systems as a function of switch illumination. The control module of the present invention can illuminate the same switch differently to control different vehicle systems. The cited references provide no such capability.

The Ebine patent includes strips of buttons having fixed operations associated therewith. The functions controlled by the switches cannot vary. The only variance in the Ebine patent relates to a user manually controlling whether the buttons are visible or hidden. In fact, the Ebine patent fails to even disclose whether the buttons can be activated or deactivated, i.e., the Ebine patent fails to disclose whether the buttons are operational when hidden.

The Ebine patent fails to disclose a control module to hide and unhide the buttons. It requires a user to manually actuate a switch to hide and unhide the buttons. Moreover, the Ebine patent fails to control different camera operations with the same switches. It only associates a single operation with each switch. As such, it cannot teach or suggest a



control module to selectively illuminate the switches or a control module that controls different vehicle operations as function of switch illumination.

The Damiani application fails to make up for the deficiencies of the Ebine patent. The Damiani application includes a control module to vary information shown in a display. Fixed buttons are offset from the display for user directed control of the displayed information and to coordinate execution of operations associated therewith.

The Damiani application fails to disclose a control module to selectively illuminate the buttons. In fact, the Damiani application does not even illuminate the buttons, let alone selectively illuminating them in accordance with the present invention. As such, it cannot teach or suggest a control module to selectively illuminate the buttons or a control module that controls different vehicle operations as function of switch illumination.

The Appellants submit the cited references fail to teach each limitation of the claims 1 and 17. As such, the Appellants submit the proposed combination is unsuitable for rejecting claims 1 and 17 and the claims that depend therefrom.

**1. Claims 15 and 21 Are Separately Patentable Under  
35 U.S.C. § 103(a) Over The Ebine Patent and Damiani Application**

Dependent claims 15 and 21 depend from patentable independent claims 1 and 17 and are patentable at least for the same reasons that those claims are patentable. Moreover, dependent claims 15 and 21 are separately patentable. The cited references fails to teach or suggest using multiple icons for one or more of the switches. The multiple icons on the same switch are separately illuminated to indicate the different vehicle systems controlled with

actuation of the same. In this manner, the same switch is associated with two different vehicles systems and used to control the same as a function of switch illumination.

As noted above, neither of the Ebine patent or Damiani application teach or suggest buttons having multiple icons, let alone selectively illuminating the individual icons. The references also fail to provide any motivation for doing the same. The Ebine patent fails to suggest varying the operations associated with the buttons and the Damiani application fails to suggest illuminating the buttons.

The Appellants submit claims 15 and 21 are separately patentable as the cited reference fail to teach or suggest the limitation included therein.

**A. Claims 18 and 20 Are Patentable Under 35 U.S.C. § 103(a)  
Over The Ebine Patent and Damiani Application and Fukumoto patent**

Claims 18 and 20 depend from patentable independent claim 17 and are patentable at least for the same reasons that claim 17 is patent.

**C. Conclusion**

In view of the foregoing and in light of the Notice of Panel Decision from Pre-Appeal Brief Review, which withdrew the rejections in light of the Borkowski patent, the Appellants submit each rejection has been fully replied to and traversed. The Board is respectfully request to pass the case to issue.

The fee of \$500 as applicable under the provisions of 37 C.F.R. § 41.20(b)(2) is enclosed. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,  
**Karl R. Kennedy et. Al**

By: \_\_\_\_\_

  
John R. Buser

Registration No. 51,517

Attorney/Agent for Applicant

Date: 12-4-06

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Enclosure - Appendices



**VIII. CLAIMS APPENDIX**

1. In a vehicle having a passenger compartment, an instrument panel system comprising:

an instrument panel;

a control panel attachable to the instrument panel, the control panel comprising a plurality of switches for use by an occupant in the passenger compartment to control at least one vehicle system;

an illumination source for selectively illuminating at least one of the plurality of switches, wherein each of the plurality of switches is visible to the occupant only when illuminated by the illumination source; and

a control module in communication with the control panel and the illumination source, the control module for selectively interfacing the control panel with the at least one vehicle systems to be controlled, and for controlling the illumination source to selectively illuminate at least one of the plurality of switches based on the at least one of the plurality of vehicle systems to be controlled.

2. The instrument panel system of claim 1 wherein the illumination source comprises a projector for projecting light onto the plurality of switches.

3. The instrument panel system of claim 2 wherein the projector is to be located in the passenger compartment.

4. The instrument panel system of claim 3 wherein the projector projects images onto surfaces associated with the plurality of switches, the associated surfaces visible to the occupant.

5. The instrument panel system of claim 4 wherein the projector further projects an additional image onto a surface of the instrument panel visible to the occupant, the surface of the instrument panel and the projected additional image acting as a display for conveying information to the occupant.

6. The instrument panel system of claim 4 wherein the projector further projects an additional image onto a surface of the control panel visible to the occupant, the surface of the control panel and the projected additional image acting as a display for conveying information to the occupant.

7. The instrument panel system of claim 2 wherein each of the plurality of switches is substantially transparent and the projector projects images onto the plurality of switches, the images visible to the occupant.

8. The instrument panel system of claim 7 wherein the projector further projects an additional image onto a substantially transparent surface of the instrument panel, the substantially transparent surface of the instrument panel and the projected additional image acting as a display for conveying information to the occupant.

9. The instrument panel system of claim 7 wherein the projector further projects an additional image onto a substantially transparent surface of the control panel, the substantially transparent surface of the control panel and the projected additional image acting as a display for conveying information to the occupant.

10. The instrument panel system of claim 1 wherein the illumination source is a plurality of light emitting diodes in proximity to the plurality of switches.

11. The instrument panel system of claim 1 wherein each of the plurality of switches comprises a touch activated field effect switch.

12. The instrument panel system of claim 1 wherein each of the plurality of switches comprises a membrane switch.

13. The instrument panel system of claim 1 further comprising a control module to be provided in communication with the control panel and the illumination source, the control module for selectively interfacing the control panel with the at least one vehicle system to be controlled, and for controlling the illumination source to selectively illuminate at least one of the plurality of switches based on the at least one vehicle system to be controlled.

14. The instrument panel system of claim 1 wherein each of the plurality of switches comprises at least one icon for illumination by the illumination source.

15. The instrument panel system of claim 14 wherein the at least one icon comprises a plurality of icons, each of the plurality of icons associated with one of a plurality of vehicle systems.

16. The instrument panel system of claim 15 wherein each of the plurality of switches comprises at least one icon for illumination by the illumination source, and wherein the control module selectively illuminates the at least one icon based on the at least one vehicle system to be controlled.

17. In a vehicle having a passenger compartment, an instrument panel system comprising:  
an instrument panel;

a control panel attachable to the instrument panel, the control panel comprising a plurality of switches for use by an occupant in the passenger compartment to control a plurality of vehicle system, each of the plurality of switches having a plurality of icons associated therewith, each icon associated with one of the plurality of vehicle systems;

an illumination source for selectively illuminating the plurality of icons, wherein each of the plurality of switches is visible to the occupant only when an associated icon is illuminated by the illumination source; and

a control module in communication with the control panel and the illumination source, the control module for selectively interfacing the control panel with at least one of the plurality of vehicle systems to be controlled, and for controlling the illumination source to selectively illuminate at least one of the plurality of icons based on the at least one of the plurality of vehicle systems to be controlled.

18. The instrument panel of claim 17 wherein each of the plurality of switches includes an audible actuation notification to provide the occupant with an indication of actuation of the switch.

19. Cancelled

20. The instrument panel system of claim 17 wherein the illumination source is a projector for projecting light onto the plurality of switches.

21. The instrument panel system of claim 17 wherein at least two icons are associated with each switch and the control module controls which of the at least two icons is illuminated and the vehicle system controlled as function thereof.



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Examiner: Jacob Y. Choi

TRANSMITTAL OF AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Enclosed herewith:

1. Copy of Notification of Non-Compliant Appeal Brief; and
2. Amended Appeal Brief (37 C.F.R. § 41.37). The Appeal Brief is amended to change the heading A-1 on page 9 from "Claims 15 and 20" to "Claims 15 and 21." These amendments are made in response to the Notice of Non-Compliant Appeal Brief mailed November 20, 2006.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8 (FIRST CLASS MAIL)**

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

12-4-06  
Date of Deposit

John R. Buser  
Name of Person Signing

[Signature]  
Signature



No fees are believed to be necessary. If, however, any fees are required the Commissioner is hereby authorized to charge any fees or credit any overpayments to our Deposit Account No. 02-3978.

Respectfully submitted,

**Karl R. Kennedy et al.**

By: 

John R. Buser

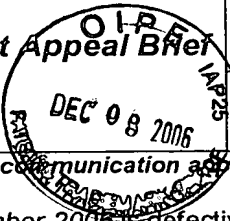
Registration No. 51,517

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**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**



Application No. 10/717,078	Applicant(s) KENNEDY ET AL.	
Examiner Jacob Y. Choi	Art Unit 2875	

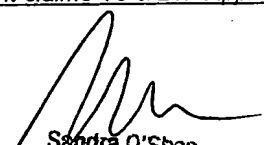
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 08 September 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

Page 8 states an argument regarding claims 15 & 20 (e.g., heading) but discuss dependent claims 15 & 21. Appropriate correction(s) required.

  
Sandra O'Shea  
Supervisory Patent Examiner  
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